IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WA.No. 1540 of 2007

AGAINST THE JUDGEMENT IN WPC.5777/2005 Dated 30/10/2006

.....

APPELLANT/1ST PETITIONER

ITHIKKARA BLOCK PROCESSING & MARKETING
CO-OPERATIVE SOCIETY LIMITED NO.Q 358,
KARAMCODE P.O., CHATHANNOOR, KOLLAM DISTRICT,
REP.BY ITS PRESIDENT, VIJAYAKUMAR, ARAPURA
PUTHENVEETTIL, MAMPILLY KUNNAM, CHATHANNOOR,
KOLLAM DISTRICT.

BY SR.ADV.SRI.R.D.SHENOY &
ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER

RESPONDENTS/RESPONDENTS:
---

1. THE SECRETARY, KERALA CO-OPERATIVE
EMPLOYEES UNION, CHATHANNOOR AREA COMMITTEE,
ADICHANALLOOR F.S.C.B., ADICHANALLOOR P.O.,
KOLLAM.

2. K.RAJENDRAN NAIR, KUNNUMPURATHU VEEDU,
NORTH MYLAKKAD, KOTTIYAM P.O., KOLLAM DISTRICT.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

W.A.No.1540 of 2007

Dated, this the 3rd day of August, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of an order passed by the learned Single Judge in W.P.(C) No.5777 of 2005 dated 30th October, 2006. By the impugned order the learned Single Judge has declined to entertain the writ petition solely on the ground of delay and laches on the part of the petitioner in approaching this Court.

(2) The facts in nutshell are: The petitioner is a society registered under the provisions of the Kerala Co-operative Societies Act. The society was before the Labour Court, Kollam in I.D.No.61 of 1993. The respondent before the Labour Court was the workman.

(3) The society was represented by its learned counsel.

(4) The Labour Court after adjudicating on the issue involved, by its order dated 3rd September, 2003 has disposed of the dispute with a direction to the society to reinstate the workman in service with 60% of the backwages and continuity of service. The award passed by the Labour Court was pronounced in the open court.

(5) Nearly after a year and a half, the society feeling aggrieved by the award passed by the Labour Court has approached this Court in W.P.(C) No.5777 of 2005. In the writ petition there was not even an averment explaining the delay in approaching the Court. Keeping in view the date of the award and the date of filing of the writ petition, the learned Single Judge was of the opinion that the delay is fatal to the proceedings and therefore, has

declined to exercise his discretionary jurisdiction. That is how the petitioner is before us in this writ appeal.

(6) Sri.R.D.Shenoy, learned senior counsel, would submit that the learned Single Judge was not justified in rejecting the writ petition at the threshold on the ground of delay and laches and, therefore, he requests us to interfere with the order passed by the learned Single Judge. In support of his contention, the learned counsel has taken us through the observations made by the apex Court in the case of *Shiv Dass* v. *Union of India & others* (AIR 2007 SC 1330). In the said decision the apex Court has observed as under:

> "6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports and Ors. (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.
>
> 7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd etc., (1874) 5 PC 221 at page 239 was approved by this Court in The Moon Mills Ltd. v. M.R.Meher, President, Industrial Court, Bombay and Ors. (AIR 1967 SC 1450) and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and Ors. (AIR 1969 SC 329), Sir Barnes had stated:
>
> > "Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that

> remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

> 8. It was stated in State of M.P. v. Nandlal Jaiswal and Ors. (AIR 1987 SC 251), that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

(9) At paragraph 8, the Supreme Court has made it clear that if there is inordinate delay on the part of the petitioner and if such delay is not properly/satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiciton.

(10) In the instant case, as we have already noticed, the award was passed by the Labour Court in I.D.No.61 of 1993 on 3.9.2003. The said award was questioned by the petitioner society before this Court only on 17.2.2005. In the writ petition, not even an averment was made explaining the delay in filing

the writ petition. In our opinion, an indolent person is not entitled to the discretionary relief of this Court. Therefore, keeping the well settled legal position in view, the learned Single Judge, in our opinion, has rightly rejected the writ petition.

(11) Having gone through the orders passed by the learned Single Judge, we are of the opinion that the learned Single Judge has not committed any error whatsoever which would call for our interference. Therefore, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

vns